

**LEGISLATIVE JOURNAL  
OF THE  
STATE OF NEBRASKA**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**1992**

**Convened November 5, 1992**

**Adjourned November 12, 1992**

**LINCOLN, NEBRASKA**

**Compiled**

**Under the Authority of the Legislature**

**by**

**PATRICK J. O'DONNELL, CLERK**

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16	C. N. "Bud" Robinson	Blair	Educator and Businessman	Burt, Cuming*, Thurston, Washington

Dist.	Name	Address	Occupation	Counties
17	Gerald Conway .....	Wayne .....	Consultant .....	Dakota, Dixon, Wayne*
18	Stan Schellpeper .....	Stanton .....	Farmer/Feeder .....	Colfax, Cuming*, Dodge*, Stanton
19	Elroy M. Hefner .....	Coleridge .....	Business Executive .....	Cedar, Knox, Pierce, Wayne*
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21	Richard Peterson .....	Norfolk .....	Farmer/Beekeeper/ Businessman	Madison
22	Jennie Robak .....	Columbus .....	Homemaker/Disaster Reservist FEMA	Boone*, Nance, Platte*
23	Loran Schmit .....	Bellwood .....	Farmer .....	Butler, Platte*, Saunders
24	Scott Moore .....	Seward .....	Farmer/State Senator .....	Polk*, Seward, York
25	Jerome Warner .....	Waverly .....	Livestock/Farming .....	Lancaster*
26	Don Wesely .....	Lincoln .....	Senior Research Associate-LTT	Lancaster*
27	DiAnna R. Schimek .....	Lincoln .....		Lancaster*
28	Chris Beutler .....	Lincoln .....	Attorney, Businessman .....	Lancaster*
29	LaVon Crosby .....	Lincoln .....		Lancaster*
30	Dennis M. Byars .....	Beatrice .....	Development Officer for Martin Luther Home	Gage, Jefferson*
31	Jerry Chizek .....	Omaha .....	Public Affairs Manager .....	Douglas*
32	George Coordsen .....	Hebron .....	Farmer .....	Fillmore, Jefferson*, Saline, Thayer
33	Ardyce L. Bohlke .....	Hastings .....		Adams
34	Rod Johnson .....	Sutton .....		Clay, Hall*, Hamilton, Merrick, Polk*
35	Arlene Nelson .....	Grand Island .....	State Senator .....	Hall*

Dist.	Name	Address	Occupation	Counties
36	Jim D. Cudaback.....	Riverdale.....	Property Manager.....	Buffalo*, Hall*
37	Douglas A. Kristensen.....	Minden.....	Attorney.....	Buffalo*, Franklin, Kearney, Nuckolls, Webster
38	W. Owen Elmer.....	Indianola.....	Agri-Business.....	Frontier, Furnas, Gosper, Harlan, Lincoln*, Red Willow
39	Edward J. Schrock.....	Elm Creek.....	Farmer.....	Dawson, Phelps
40	Merton L. Dierks.....	Ewing.....	Veterinarian/Rancher.....	Antelope, Boone*, Boyd, Holt
41	Carson H. Rogers.....	Ord.....	Pork Producer.....	Custer*, Garfield, Greeley, Hall*, Howard, Loup, Sherman, Valley, Wheeler
42	David F. Bernard-Stevens.....	North Platte.....	Educator/State Senator.....	Lincoln*
43	Howard A. Lamb.....	Anselmo.....	Rancher.....	Blaine, Brown, Cherry, Custer*, Hooker, Keya Paha, Logan, McPherson, Rock, Thomas
44	Rex Haberman.....	Imperial.....	State Senator.....	Arthur, Chase, Deuel, Dundy, Grant, Hayes, Hitchcock, Keith, Lincoln*, Perkins
45	D. Paul Hartnett.....	Bellevue.....	College Professor.....	Sarpy*
46	David Landis.....	Lincoln.....	College Instructor.....	Lancaster*
47	Dennis G. Baack.....	Kimball.....	Consultant.....	Banner, Cheyenne, Garden, Kimball, Morrill, Scotts Bluff*
48	Joyce Hillman.....	Gering.....		Scotts Bluff*
49	Wm. R. "Bob" Wickersham.....	Harrison.....	Attorney.....	Box Butte, Dawes, Sheridan, Sioux

#### Clerk

Patrick J. O'Donnell . . . . . Lincoln

## **RULES OF THE LEGISLATURE**

Rules in effect at the commencement of the Ninety-Second Legislature, Fourth Special Session, 1992, are the same rules in effect at the commencement of the Ninety-Third Legislature, First Session, 1993.

**FIRST DAY - NOVEMBER 5, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**FIRST DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, November 5, 1992

Pursuant to a proclamation by His Excellency, E. Benjamin Nelson, Governor of the State of Nebraska, the Ninety-Second Legislature, Fourth Special Session, assembled in the West Legislative Chamber of the State Capitol, at the hour of 2:00 p.m., Thursday, November 5, 1992, and was called to order by President Moul.

**PRAYER**

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

**ROLL CALL**

The roll was called and the following members were present:

Abboud, Chris	Hefner, Elroy M.	Robak, Jennie
Ashford, Brad	Johnson, Lowell C.	Robinson, C. N. Bud
Baack, Dennis	Johnson, Rod	Rogers, Carson
Bohlke, Ardyce L.	Labeledz, Bernice	Schellpeper, Stan
Chambers, Ernie	Lamb, Howard A.	Schimek, DiAnna R.
Chizek, Jerry	Landis, David M.	Schmit, Loran
Conway, Gerald	Lindsay, John C.	Schrock, Edward
Coordsen, George	Lynch, Daniel C.	Warner, Jerome
Crosby, LaVon	Moore, Scott	Wehrbein, Roger R.
Cudaback, Jim D.	Morrissey, Spencer W.	Wesely, Don
Elmer, W. Owen	Nelson, Arlene	Will, Eric
Haberman, Rex S.	Peterson, Richard	Withem, Ron
Hall, Tim	Pirsch, Carol McBride	

The following members were excused:

**Bernard-Stevens, David F.**  
**Beutler, Chris**  
**Beyer, Emil E., Jr.**  
**Byars, Dennis M.**

Dierks, Merton L.  
Hartnett, D. Paul  
Hillman, Joyce  
Horgan, Thomas R.

Kristensen, Doug  
Rasmussen, Jessie K.  
Wickersham, William R.

## DECLARATION

Pursuant to a proclamation issued by the Honorable E. Benjamin Nelson, Governor of Nebraska, we are here and now assembled in the Ninety-Second Legislature, Fourth Special Session of the Nebraska Legislature. I, as Lieutenant Governor, declare that we are now open for the transaction of business.

(Signed) Maxine Moul  
Lieutenant Governor

# CERTIFICATE

## STATE OF NEBRASKA

United States of America, )  
 ) ss. Department of State  
State of Nebraska )

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of a Proclamation by the Governor of the State of Nebraska calling an Extraordinary Session of the Legislature.

I hereby certify that the attached document was filed in the Office of the Secretary of State on the 2nd day of November, 1992.

Finally, I hereby certify that a copy of this proclamation is on file in the office of the Secretary of State and is a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this fifth day of November in the year of our Lord,  
one thousand nine hundred and ninety-two.

(SEAL)

Allen J. Beermann, Secretary of State

## PROCLAMATION



BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, E. Benjamin Nelson, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on November 5, 1992, at 2:00 p.m. for the purpose of considering and enacting legislation on only the following subjects:

1. To provide for the collection of certain revenues from the following sources to address current deficit appropriations: (a) a depreciation surcharge; (b) a surcharge on maximum corporate income tax rate; (c) an occupation tax for certain corporations; (d) a removal of sales tax exemption on purchases of energy for use in processing, manufacturing or refining tangible personal property, in the generation of electricity or by any hospital; (e) a reduction of the sales tax collection fee.
2. To provide for a mechanism whereby taxes declared unconstitutional in Bahensky vs. State, 241 Neb. 147 (1992), shall be credited or refunded.
3. To impose a method of calculating the general interest rate in § 45-104.01 R.R.S.
4. To repeal by operation of law § 77-1736.04, R.S. Supp., 1992.
5. To appropriate funds for the necessary expenses of the extraordinary session herein called.

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by presenting to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the Great Seal of the State of Nebraska to be affixed this 2nd day of November in the year of the Lord One Thousand Nine Hundred and Ninety-Two.

(Signed) E. BENJAMIN NELSON  
Governor

(SEAL)  
Attest:

(Signed) ALLEN J. BEERMANN  
Secretary of State

**MOTION - Election of Officers**

Speaker Baack moved that the following officers be elected to serve for the Ninety-Second Legislature, Fourth Special Session:

Clerk of the Legislature	Patrick J. O'Donnell
Assistant Clerk of the Legislature	Richard K. Brown
Sergeant at Arms	Carl E. Kamprath
Chaplain Coordinator	Harland Johnson

The motion prevailed.

**CERTIFICATE****STATE OF NEBRASKA**

United States of America,	)	
	) ss.	Department of State
State of Nebraska	)	

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of the Official Roster of members of the Nebraska Unicameral Legislature elected or appointed to serve in the Ninety-second Legislature, Fourth Special Session, 1992.

Further, I hereby certify that the members so listed on the Official Roster attached hereto are the duly elected or appointed members of the Unicameral Legislature in the State of Nebraska for the Ninety-second Legislature, Fourth Special Session, 1992.

Finally, I hereby certify that all election returns, abstracts, canvass and appointment records with reference to said members are on file in the office of the Secretary of State and are a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this fifth day of November in the year of our Lord, one thousand nine hundred and ninety-two.

(SEAL)

Allen J. Beermann, Secretary of State

DISTRICT	NAME	ELECTED
1	Spencer W. Morrissey	November 8, 1988
2	Roger R. Wehrbein	November 6, 1990
3	Emil E. Beyer, Jr.	November 8, 1988
4	Thomas R. Horgan	November 6, 1990
5	Bernice Koziol Labedz	November 8, 1988
6	Brad Ashford	November 6, 1990
7	Tim Hall	November 8, 1988
8	Eric Will	November 6, 1990
9	John C. Lindsay	November 8, 1988
10	Carol McBride Pirsch	November 6, 1990
11	Ernie Chambers	November 8, 1988
12	Chris Abboud	November 6, 1990
13	Daniel C. Lynch	November 8, 1988
14	Ron Withem	November 6, 1990
15	Lowell C. Johnson	November 8, 1988
16	C. N. Bud Robinson	November 6, 1990
17	Gerald Conway	November 8, 1988
18	Stan Schellpeper	November 6, 1990
19	Elroy M. Hefner	November 8, 1988
20	Jessie K. Rasmussen	November 6, 1990
21	Richard Peterson	November 8, 1988
22	Jennie Robak	November 6, 1990
23	Loran Schmit	November 8, 1988
24	Scott Moore	November 6, 1990
25	Jerome Warner	November 8, 1988
26	Don Wesely	November 6, 1990
27	DiAnna R. Schimek	November 8, 1988
28	Chris Beutler	November 6, 1990
29	LaVon Crosby	November 8, 1988
30	Dennis M. Byars	November 6, 1990
31	Jerry Chizek	November 8, 1988
32	George Coordsen	November 6, 1990
33	Ardyce L. Bohlke	Appointed 7-1-91 ***
34	Rod Johnson	November 6, 1990
35	Arlene Nelson	November 8, 1988
36	Jim D. Cudaback	November 6, 1990
37	Doug Kristensen	November 8, 1988
38	W. Owen Elmer	November 6, 1990
39	Edward Schrock	Appointed 12-31-90 *
40	Merton L. Dierks	November 6, 1990
41	Carson Rogers	November 8, 1988
42	David F. Bernard-Stevens	November 6, 1990
43	Howard A. Lamb	November 8, 1988

44	Rex S. Haberman	November 6, 1990
45	D. Paul Hartnett	November 8, 1988
46	David M. Landis	November 6, 1990
47	Dennis Baack	November 8, 1988
48	Joyce Hillman	November 6, 1990
49	William R. Wickersham	Appointed 1-9-91 **

\*Appointed 12-31-90 to replace William E. Barrett (resigned)

\*\*Appointed 1-9-91 to replace Sandra K. Scofield (resigned)

\*\*\*Appointed 7-1-91 to replace Jacklyn J. Smith (resigned)

### MESSAGES FROM THE GOVERNOR

October 6, 1992

Madam President, Mr. Speaker  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska State Game and Parks Commission, requiring legislative approval.

APPOINTEE: Charles E. Blaha, 1730 "M" Street, Ord, NE 68862

This appointment is respectfully submitted for your consideration.

Sincerely,  
(Signed) E. Benjamin Nelson  
Governor

October 6, 1992

Madam President, Mr. Speaker  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Madam President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Investment Council, requiring legislative approval.

APPOINTEE: Bruce W. Bisson, 4014 S. 108th Street, Omaha,  
NE 68137-1215

This appointment is respectfully submitted for your consideration.

Sincerely,  
(Signed) E. Benjamin Nelson  
Governor

### ATTORNEY GENERAL'S OPINIONS

#### Opinion No. 92115

DATE: October 1, 1992

SUBJECT: Service by Nebraska Supreme Court Judges on  
Judicial Nominating Commissions in Light of  
State ex rel. Spire v. Conway, 238 Neb. 766, 472  
N.W.2d 403 (1991)

REQUESTED BY: Senator Dianna R. Schimek  
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General  
Jan E. Rempe, Assistant Attorney General

You have requested our opinion regarding the construction of Article II, Section 1, and Article V, Section 21, of the Nebraska Constitution in light of State ex rel. Spire v. Conway, 238 Neb. 766, 472 N.W.2d 403 (1991). You are concerned about potential separation of powers violations created by the Nebraska Supreme Court's involvement in judicial nominating commissions. Specifically, you have asked about the constitutionality of Nebraska Supreme Court Judges sitting as presiding members of judicial nominating commissions and the Nebraska Supreme Court's promulgation of rules regarding procedures to be followed in the judicial nominating process. Based on the following analysis, we conclude that the Nebraska Supreme Court's participation in the judicial nominating process in these ways does not violate the separation of powers provision of the Nebraska Constitution.

#### I. Applicable Law

The Nebraska Constitution provides:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

Neb. Const. art II, § 1 (emphasis added).

Article V, Section 21, of the Nebraska Constitution states in part:

In the case of any vacancy in the Supreme Court . . . , such vacancy shall be filled by the Governor from a list of at least two nominees presented to him by the appropriate judicial nominating commission. . . .

There shall be a judicial nominating commission for the Chief Justice of the Supreme Court and one for each judicial district of the Supreme Court . . . . Each judicial nominating commission shall consist of nine members, one of whom shall be a Judge of the Supreme Court who shall be designated by the Governor and shall act as chairman, but shall not be entitled to vote. . . .

(Emphasis added.)

The Nebraska Legislature has further defined the functions and makeup of judicial nominating commissions in Neb. Rev. Stat. §§ 24-801 to 24-812.1 (Reissue 1989). In addition, Neb. Rev. Stat. § 24-812.01 (Reissue 1989) requires the Nebraska Supreme Court to promulgate rules regarding nominating procedure.

Also relevant to your inquiry is State ex rel. Spire v. Conway, 238 Neb. 766, 472 N.W.2d 403 (1991), in which the Nebraska Supreme Court held that a senator in the Nebraska Legislature who was also an assistant professor at Wayne State College was "a member of one branch of government, the executive, exercising the powers of another, the legislative, and, as a consequence, is in violation of article II of the state Constitution." Id. at 787, 472 N.W.2d at 403. The Conway court also interpreted the separation of powers provision in Article II, Section 1, of the Nebraska Constitution to prohibit "members of one branch from exercising the powers of a coordinate branch and therefore prohibits any member of one of the three branches--whether it be an officer or employee--from being an officer in another branch." Id. at 788, 472 N.W.2d at 415-16.

## II. Analysis

You are concerned that, in light of State ex rel. Spire v. Conway, supra, members of judicial nominating commissions who assist the Governor in making judicial appointments are part of the executive branch of government; therefore, Article II, Section 1, of the Nebraska Constitution would preclude Nebraska Supreme Court Judges from serving as members of these commissions.

As quoted above, Article II, Section 1, of the Nebraska Constitution requires separation of legislative, executive, and judicial powers "except as hereinafter expressly directed or permitted." The Nebraska Supreme Court has determined that entities authorized by the Nebraska Constitution which have multiple governmental powers fit within this exception to Article II. See School Dist. of Seward Educ. Ass'n v. School Dist. of Seward, 188 Neb. 772, 199 N.W.2d 752 (1972) (Industrial Commission created by Neb. Const. art. XV, § 9); Swanson v. Sorensen, 181 Neb. 312, 148 N.W.2d 197 (1967), cert. denied, 389 U.S. 825, 88 S. Ct. 62 (1967) (State Railway Commission (now Public Service Commission) authorized by Neb. Const. art. IV, § 20); School Dist. No. 8 v. State Bd. of Educ., 176 Neb. 722, 127 N.W.2d 458 (1964) (State Department of Education created by Neb. Const. art. VII, § 14, since repealed).

In State ex rel. Spire v. Conway, *supra*, the court noted that the above exceptions to Article II of the Nebraska Constitution involved agencies which were constitutionally authorized to exercise the powers of more than one governmental branch, not individuals who were so authorized. While the constitutional provisions creating exceptions to Article II authorize certain agencies to exercise multiple governmental powers, these provisions do not require such agencies "to employ personnel who exercise power in another governmental branch." State ex rel. Spire v. Conway, *supra* at 785, 472 N.W.2d at 414.

In contrast, Article V, Section 21, of the Nebraska Constitution expressly directs that Supreme Court Judges, personnel who obviously exercise power in the judicial branch, be members of judicial nominating commissions, which assist the Governor in performing the designated executive function of filling judicial vacancies. This constitutional provision requires judges who exercise power in one governmental branch to be members of another branch, thus creating an exception to the separation of powers provision contained in Article II, Section 1, of the Nebraska Constitution.

### III. Conclusion

Construing the Nebraska Constitution as a whole, Banner County v. State Bd. of Equal. and Assessment, 226 Neb. 236, 411 N.W.2d 35 (1987), we conclude that Article V, Section 21, of the Nebraska Constitution, which requires Nebraska Supreme Court Judges to serve on judicial nominating commissions, creates an exception to the separation of powers provision contained in Article II, Section 1, of the Nebraska Constitution. Therefore, the Nebraska Supreme Court's involvement in the judicial nominating process, including chairing nominating commissions and promulgating procedural rules, does not violate Article II, Section 1, of the Nebraska Constitution.

Sincerely,

DON STENBERG

Attorney General

(Signed)

Jan E. Rempe

Assistant Attorney General

cc: Patrick J. O'Donnell  
Clerk of the Legislature  
13-223-6.92c

Opinion No. 92117

DATE: October 13, 1992

SUBJECT: Authority of Compact Commission to Select Host State

REQUESTED BY: Governor E. Benjamin Nelson

WRITTEN BY: Don Stenberg, Attorney General  
Linda L. Willard, Assistant Attorney General

You have requested answers to several questions regarding the Central Interstate Low-Level Radioactive Waste Compact. Your first question is whether the Compact had acted beyond its scope of authority in selecting Nebraska as the host state on December 15, 1987. In order to facilitate a timely response to your question, we have confined our review to your questions as they relate to the questions raised in the letter accompanying your request.

The accompanying letter cites to Article V of the Compact which states in relevant part:

(b) If no state volunteers or if no proposal identified by a volunteer state is deemed acceptable by the commission, based on the criteria in section (c) of this Article, then the commission shall publicly seek applicants for the development and operation of regional facilities.

(c) The commission shall review and consider each applicant's proposal based upon the following criteria:

....

(d) The commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria enumerated in section (c) and the needs of the region.

(e) Following notification of each party state of the results of the preliminary selection process, the commission shall:

(1) Authorize any person whose proposal has been selected to pursue licensure of the regional facility or facilities in accordance



with the proposal originally submitted to the commission or as modified with the approval of the commission; . . .

This Compact was adopted by the Nebraska Legislature during the 1983 legislative session and became effective May 18, 1983.

The accompanying letter further cited from the Central Interstate Low-Level Radioactive Waste Compact Commission Annual Report of 1984-85 which states at page 5:

The conferees reached a consensus that the Commission established by the compact should develop criteria for site selection. Following the development of the criteria, the Commission would then consider application from potential site operators. The Commission would select an operator best suited to meet the needs of the region, and then authorize the applicant to seek a license to operate a facility from the appropriate regulatory authority.

The Annual Report for 1984-85 also states at page 10:

The Conferees considered several alternatives for facility designation. One option presented was to have the Commission designate a state within the region as a host state with the siting decision to be made by the state. The Conferees feared that such a designation process could be reduced to a political decision, so they chose instead to adopt the option currently found in Article V of the Compact. In general, the Commission takes application from potential facility operators and makes a choice of which proposal(s) will better serve the needs of the region.

It is unclear from the Annual Report whether the conferees feared that the selection of a host state or the selection of a site or both might be reduced to a political decision. The author of the letter, however, concludes that the Compact was designed so that the Compact Commission could not identify the host state because of their fear that the process would be reduced to a political decision.

The author of the letter accompanying your request makes much of the intent of the Compact members as reflected in the 1984-85 Annual Report. It should be noted that the representatives who sat on the Compact Commission in 1987, when Nebraska was selected as a host state, with the exception of the Kansas delegate, were either the member delegates or alternates to the Compact in 1984-85.

The author of the letter does not question the selection of a facility developer. The proposal selected by the Compact Commission was the one submitted by US Ecology as developer. This proposal included a proposal for selection of a host state. (US Ecology proposal: p. I-1-3; Appendix A.)

Subsequent to selection of the developer of the project, the Compact Commission charged US Ecology to look at three factors and compare the Compact states in relation to those factors. (Compact minutes, December 8, 1987, pp. 72-82.) These three factors were environmental

considerations, waste generation, and transportation. Use of these criteria in the host state selection was approved by the Compact Commission. US Ecology evaluated each state in the Compact and ranked each state on the basis of these criteria. The rankings were then presented to the Compact Commission at the December, 1987, meeting in Louisiana. (Compact minutes, December 15, 1987, pp. 35-58.) After reviewing the criteria, the Compact Commission voted and selected Nebraska as the host state in which the developer should seek a site for development of the storage facility. (Compact minutes, December 15, 1987, pp. 58-63.)

Article V of the Compact does not forbid selection of a host state but provides for selection of a developer and a site. The plan submitted by US Ecology and approved by the Compact Commission, as noted above, included selection of a host state as part of the narrowing process in selection of a site.

The Compact provides that when no state volunteers to be the host state, the Commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria set out in the Compact. The members of the Compact Commission selected the proposal submitted by US Ecology. The proposal submitted by US Ecology called for selection of a host state and a procedure for selection of a facility site within the host state. Therefore, it does not appear that the Compact Commission acted beyond its scope of authority in selecting Nebraska as the host state as part of the US Ecology proposal which had been approved by the Compact Commission.

You next ask, if the Commission acted beyond its scope, what the state's legal recourse would be. Since we have concluded that the Compact Commission did not act beyond its scope of authority in relation to the questions you presented, there is no need to address the state's legal recourse in this situation.

Your final question is what authority, if any, does the State of Nebraska have to unilaterally call a moratorium on the licensing process. As a member of the Central Interstate Compact, Nebraska has obligations to the Compact as well as to a license applicant.

Nebraska's participation in the Compact is in the nature of a contract with the other member states in order to accomplish common purposes of development and management of a low-level radioactive waste storage facility. The Compact Commission has subsequently contracted with the developer, US Ecology, to use its best efforts to site and develop a facility for the storage of low-level radioactive waste for member states which will meet the licensing standards of either the federal Nuclear Regulatory Commission or the host state, if it is a compliance state. Nebraska is a compliance state. US Ecology has submitted an application to the Nebraska Department of Environmental

Quality for a low-level radioactive waste storage facility in the State of Nebraska.

The state, having received a licensing application pursuant to the rules and regulations established for that licensing, would have a duty to proceed with the licensing process. The applicant's failure to comply with the licensing conditions should result in the non-issuance of a license but would not be reason to suspend the licensing process if any deficiencies noted can and are being corrected.

Neb.Rev.Stat. § 81-1599 (Reissue 1987) provides in pertinent part, "{t}he department shall have and may exercise the following powers and duties to carry out the Low-Level Radioactive Waste Disposal Act: . . . (2) Issue, modify, suspend, or revoke licenses or orders; . . ." Statutes directed at public officers are ordinarily interpreted as either mandatory or discretionary. Use of the term "may exercise" purports to give the Department a discretionary duty as far as licensure. Thus, whether or not a license is issued is a discretionary matter which would be reviewed on the basis of abuse of discretion. However, the Department may not arbitrarily refuse to review the license application. If the Department suspended review of the license application, the applicant could seek a writ of mandamus from the state court. "Though {the state court} may require an inferior tribunal to exercise its judgment, or proceed to the exercise of any of its functions, it cannot control judicial discretion." Neb.Rev.Stat. § 25-2156 (Reissue 1989). Thus, the state court may mandate the Department to review the license application as part of the Department's functions, but it cannot require the Department to issue a license unless its refusal to do so is arbitrary and capricious. Downs v. Nebraska State Board of Examiners, 139 Neb. 23, 296 N.W. 151 (1941).

You have presented this office with no facts which would justify a unilateral suspension of the Department's administrative duty to review the license submitted for a low-level radioactive waste facility. Because of the many variables which may exist in any situation, it is difficult to give an answer which would apply to all situations. However, if you have questions regarding a specific situation, please feel free to consult with our office.

Sincerely,

DON STENBERG

Attorney General

(Signed)

Linda L. Willard

Assistant Attorney General

28-04-14.92

cc: Patrick J. O'Donnell

Clerk of the Legislature

**REPORTS**

The following reports were received by the Legislature:

Report from the Nebraska Energy Office covering the financial condition of the Natural Gas Revolving Loan Fund for the quarter ending September 30, 1992 as required by Section 010 of the regulations for the Municipal Natural Gas Regulation Act (Sec. 19-4617, R.R.S. 1943).

Annual report from the Nebraska State Historical Society.

Minutes from the Department of Roads Board of Public Roads Classifications and Standards for September 18, 1992.

Audit reports from the Auditor of Public Accounts for the following: Nebraska Department of Social Services; Report on Internal Control Structure and Compliance in Accordance with GAS; Office of Risk Management State Claims Board; Nebraska Investment Council; Nebraska Department of Agriculture; Nebraska Arts Council; and Nebraska Department of Health.

Statement of deposits from the Department of Roads to the Highway Cash fund and Roads Operation Cash fund for September 1992 in compliance with section 66-4,144, R.S. Supp. 1991.

Quarterly report from the Nebraska Investment Finance Authority (NIFA) on the use of the proceeds of the 1991 A-D Single Family Issue pursuant to Neb. Rev. Stat. § 58-270(4).

Annual budgetary report from the Department of Administrative Services Accounting Division for the year ended June 30, 1992.

Annual report from the State Foster Care Review Board.

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 1.** Introduced by Warner, 25; Baack, 47; Hall, 7; Landis, 46, at the request of the Governor.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 21-330 and 45-104.01, Reissue Revised Statutes of Nebraska, 1943, and sections 77-1510, 77-1735, 77-1736.07, 77-1775.01, 77-2701,

77-2702.03, 77-2703, 77-2704.13, 77-2708, 77-2716.02, and 77-2734.17, Revised Statutes Supplement, 1992; to provide a corporate fee or assessment for 1993; to change interest rate provisions; to eliminate, change, and provide refund provisions; to define a term; to change collection fees for sales and use taxes; to change an energy source and fuel tax exemption; to provide for a depreciation surcharge which is an excise tax and surcharge on corporations for tax year 1992; to provide for application of amounts paid in prior years to future liability; to harmonize provisions; to provide severability; to repeal the original sections, and also section 77-1736.04, Revised Statutes Supplement, 1992; and to declare an emergency.

**LEGISLATIVE BILL 2.** Introduced by Warner, 25.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-second Legislature, Fourth Special Session, 1992; and to declare an emergency.

**LEGISLATIVE BILL 3.** Introduced by Coordsen, 32; Schrock, 39.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-202, Revised Statutes Supplement, 1992; to exempt livestock from the personal property tax; to provide an operative date; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 4.** Introduced by Coordsen, 32; Schellpeper, 18; Schrock, 39.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-202, Revised Statutes Supplement, 1992; to exempt personal property other than certain motor vehicles from property tax; to provide an operative date; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 5.** Introduced by Hefner, 19.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2701.01 and 77-2701.02, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2703, 77-2704.13, and 77-2708, Revised Statutes Supplement, 1992; to change the income tax and sales and use tax rates; to state intent; to change retailer collection fees for sales and use tax; to change an energy source and fuel tax exemption; to eliminate a corporate fee, a depreciation surcharge, and a corporate surcharge; to harmonize provisions; to repeal the original sections, and also section 21-330, Reissue Revised Statutes of Nebraska, 1943, and

sections 77-2716.02 and 77-2734.17, Revised Statutes Supplement, 1992; and to declare an emergency.

### RESOLUTION

**LEGISLATIVE RESOLUTION 1.** Introduced by Crosby, 29; Landis, 46.

WHEREAS, Mr. E. J. Faulkner had a long and outstanding record of public service to the State of Nebraska; and

WHEREAS, Mr. Faulkner was the chief executive officer of Woodmen Accident and Life Company from 1938 to 1984 and continued to serve Woodmen until his final illness in the capacity of Honorary Chairman and Executive Counsel; and

WHEREAS, Mr. Faulkner served his country in many capacities including his service during World War II for which he received the Legion of Merit and his participation on numerous presidential commissions; and

WHEREAS, Mr. Faulkner was a national leader in the insurance industry and was the first person to serve as both the president of the Health Insurance Association of America and the American Life Convention; and

WHEREAS, Mr. Faulkner used his expertise in insurance to impact federal legislation and authored a textbook which was used in courses on health insurance; and

WHEREAS, Mr. Faulkner's generous activities, often done anonymously, have been of great assistance to the recipients; and

WHEREAS, the State of Nebraska needs and appreciates dedicated community leaders and responsible human beings like E. J. Faulkner.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, FOURTH SPECIAL SESSION:

1. That Mr. E. J. Faulkner be recognized and honored as having been an outstanding community leader and citizen of the State of Nebraska.

2. That a copy of this resolution be sent to Mr. John Haessler, President and Chief Executive Officer of Woodmen Accident and Life Company.

Laid over.

### BILLS ON FIRST READING

The following bills were read for the first time by title:

**LEGISLATIVE BILL 6.** Introduced by Schmit, 23.

A BILL FOR AN ACT relating to state government; to prohibit certain state activities after the effective date of this act; and to declare an emergency.

**LEGISLATIVE BILL 7.** Introduced by Schrock, 39; Conway, 17; Cudaback, 36; Elmer, 38; Haberman, 44; Hefner, 19; L. Johnson, 15; R. Johnson, 34; Lamb, 43; Moore, 24; Nelson, 35; Peterson, 21; Robak, 22; Robinson, 16; Rogers, 41; Wehrbein, 2.

A BILL FOR AN ACT relating to revenue and taxation; to eliminate a fee imposed on sales of commercial fertilizer; to repeal section 77-4401, Revised Statutes Supplement, 1992; and to declare an emergency.

**EASE**

The Legislature was at ease from 2:35 p.m. until 2:53 p.m.

**BILL ON FIRST READING**

The following bill was read for the first time by title:

**LEGISLATIVE BILL 8.** Introduced by Lamb, 43; Coordsen, 32; Cudaback, 36; Elmer, 38; Haberman, 44; Hefner, 19; L. Johnson, 15; Moore, 24; Peterson, 21; Robak, 22; Robinson, 16; Schmit, 23; Schrock, 39.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-202, 77-2701, and 77-2708.01, Revised Statutes Supplement, 1992; to exempt livestock from the personal property tax; to exempt depreciable agricultural machinery and equipment used in commercial agriculture from sales and use tax; to terminate a sales and use tax exemption for such machinery and equipment; to eliminate a fee on commercial fertilizer; to harmonize provisions; to provide operative dates; to repeal the original sections, and also section 77-4401, Revised Statutes Supplement, 1992; and to declare an emergency.

**EASE**

The Legislature was at ease from 2:54 p.m. until 3:04 p.m.

**REFERENCE COMMITTEE REPORT**

The Legislative Council Executive Board submits the attached report on the referral of legislative bills 1 through 8 and Governor appointments.

<b>LB</b>	<b>Committee</b>
1	Revenue
2	General File
3	Revenue
4	Revenue
5	Revenue
6	Appropriations
7	Revenue
8	Revenue

#### **Natural Resources**

Charles E. Blaha - Nebraska State Game and Parks Commission

#### **Banking, Commerce and Insurance**

Bruce W. Bisson - Nebraska Investment Council

(Signed) Jerome Warner, Chairperson  
Legislative Council  
Executive Board

#### **NOTICE OF COMMITTEE HEARING**

##### **Revenue**

LB 1	Friday, November 6, 1992	10:30 a.m.
LB 3	Friday, November 6, 1992	10:30 a.m.
LB 4	Friday, November 6, 1992	10:30 a.m.
LB 5	Friday, November 6, 1992	10:30 a.m.
LB 7	Friday, November 6, 1992	10:30 a.m.
LB 8	Friday, November 6, 1992	10:30 a.m.

(Signed) Tim Hall, Chairperson

#### **VISITORS**

Visitors to the Chamber were Berit Myhra from Norway and Mr. and Mrs. Paul Smith from Cedar Rapids; Senator-Elect Kate Witek, District 31, from Omaha; and Senator-Elect Mike Avery, District 3, from Gretna.



**ADJOURNMENT**

At 3:06 p.m., on a motion by Speaker Baack, the Legislature adjourned until 9:00 a.m., Friday, November 6, 1992.

Patrick J. O'Donnell  
Clerk of the Legislature



printed on recycled paper

**SECOND DAY - NOVEMBER 6, 1992**

**LEGISLATIVE JOURNAL**

**SECOND DAY - NOVEMBER 6, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**SECOND DAY**

Legislative Chamber, Lincoln, Nebraska  
Friday, November 6, 1992

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Baack presiding.

**PRAYER**

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

**ROLL CALL**

The roll was called and all members were present except Messrs. Abboud, Bernard-Stevens, Beutler, Beyer, Dierks, Hall, Horgan, R. Johnson, Kristensen, Lindsay, Morrissey, Schmit, Warner, Wehrbein, Wickersham, Will, Withem, Mmes. Bohlke, Labedz, Pirsch, and Rasmussen who were excused.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the first day was approved.

**NOTICE OF COMMITTEE HEARINGS  
Banking, Commerce and Insurance**

Governor Appointment Monday, November 9, 1992 1:30 p.m.  
Bruce Bisson - Nebraska Investment Council

(Signed) David Landis, Chairperson

**Natural Resources**

Governor Appointment Tuesday, November 10, 1992 2:30 p.m.  
Dr. Charles Blaha - Nebraska Game and Parks Commission

(Signed) Rod Johnson, Chairperson

**Appropriations**

LB 6 Monday, November 9, 1992 12:00 p.m.

(Signed) Scott Moore, Chairperson

**RESOLUTIONS**

**LEGISLATIVE RESOLUTION 2.** Introduced by Robinson, 16.

WHEREAS, the Oakland-Craig High School football team qualified for the Class C-2 Boys State Football Playoffs; and

WHEREAS, this achievement represents a culmination of the dedication and hard work that the team and Coach Clark Benne have put forth; and

WHEREAS, the team and Coach Benne should receive special recognition for the outstanding season they have recently completed.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, FOURTH SPECIAL SESSION:

1. That the Legislature congratulates the Oakland-Craig High School football team and Coach Clark Benne.

2. That a copy of this resolution be sent to the Oakland-Craig football team and Coach Clark Benne.

Laid over.

**LEGISLATIVE RESOLUTION 3.** Introduced by Robinson, 16.

WHEREAS, the West Point Central Catholic High School football team qualified for the Class C-2 Boys State Football Playoffs; and

WHEREAS, this achievement represents a culmination of the dedication and hard work that the team and Coach Fred Spale have put forth; and

WHEREAS, the team and Coach Spale should receive special recognition for the outstanding season they have recently completed.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, FOURTH SPECIAL SESSION:

1. That the Legislature congratulates the West Point Central Catholic High School football team and Coach Fred Spale.

2. That a copy of this resolution be sent to the West Point Central Catholic football team and Coach Fred Spale.

Laid over.

**LEGISLATIVE RESOLUTION 4.** Introduced by Robinson, 16.

WHEREAS, the Tekamah-Herman High School football team qualified for the Class B Boys State Football Playoffs; and

WHEREAS, this achievement represents a culmination of the dedication and hard work that the team and Coach Michael Hunt have put forth; and

WHEREAS, the team and Coach Hunt should receive special recognition for the outstanding season they have recently completed.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, FOURTH SPECIAL SESSION:

1. That the Legislature congratulates the Tekamah-Herman High School football team and Coach Michael Hunt.

2. That a copy of this resolution be sent to the Tekamah-Herman football team and Coach Michael Hunt.

Laid over.

**ADJOURNMENT**

At 9:29 a.m., on a motion by Mr. L. Johnson, the Legislature adjourned until 10:00 a.m., Saturday, November 7, 1992.

Patrick J. O'Donnell  
Clerk of the Legislature

**THIRD DAY - NOVEMBER 7, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**THIRD DAY**

Legislative Chamber, Lincoln, Nebraska  
Saturday, November 7, 1992

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Moul presiding.

**PRAYER**

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

**ROLL CALL**

The roll was called and all members were present except Messrs. Beyer, Chambers, Chizek, Horgan, Morrissey, Peterson, Mmes. Bohlke, Pirsch, and Rasmussen who were excused.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the second day was approved.

**RESOLUTIONS**

**LEGISLATIVE RESOLUTION 1.** Read. Considered.

LR 1 was adopted with 35 ayes, 0 nays, and 14 not voting.

**LEGISLATIVE RESOLUTION 2.** Read. Considered.

Mr. Robinson asked unanimous consent to pass over LR 2. No objections. So ordered.

**EASE**

The Legislature was at ease from 10:29 a.m. until 11:18 a.m.

**STANDING COMMITTEE REPORTS**  
**Revenue**

**LEGISLATIVE BILL 1.** Placed on General File as amended.  
Standing Committee amendment to LB 1:  
AM1184

1           1. Strike sections 2, 8, and 9 and insert the  
2 following new section:  
3           "Sec. 2. That section 45-104.01, Reissue Revised  
4 Statutes of Nebraska, 1943, be amended to read as follows:  
5           45-104.01. (1) Unless otherwise specifically  
6 provided, the interest rate assessed on delinquent payments of  
7 any taxes or special assessments owing to the State of  
8 ~~Nebraska or any political subdivision thereof of the State of~~  
9 Nebraska shall be assessed at a rate of fourteen percent per  
10 annum.

11           (2) Unless otherwise specifically provided, the  
12 interest rate assessed on delinquent payments of any taxes or  
13 special assessments owing to the State of Nebraska shall be  
14 assessed at a rate of fourteen percent per annum through  
15 December 31, 1992, and at the per annum rate determined  
16 pursuant to subsection (3) of this section after such date.

17           (3) Commencing January 1, 1993, the interest rate  
18 assessed pursuant to subsection (2) of this section shall be  
19 redetermined every other year. The rate shall be determined  
20 by the Tax Commissioner and shall be equal to the average  
21 short-term borrowing rate for the federal government during  
22 July of the previous year rounded to the nearest whole  
23 percentage point plus three percentage points. If the new  
24 rate does not increase or decrease the old rate by at least  
1 two percentage points, the old rate shall continue in effect.

2           (4)(a) The rate determined under subsection (3) of  
3 this section shall apply for the period from its effective  
4 date through the date of payment or up to the effective date  
5 of the succeeding new rate, whichever is earlier.

6           (b) Any tax or special assessment that becomes  
7 delinquent before the effective date of a new rate but which  
8 is paid after the effective date shall have a proportionate  
9 amount of the interest calculated at the old rate and a  
10 proportionate amount calculated at the new rate.

11           (c) For any taxes or special assessments that were  
12 delinquent and unpaid on or before December 31, 1992, the



- 13 interest rate shall be fourteen percent per annum through  
14 December 31, 1992.  
15 (5) For any credits or refunds of taxes or special  
16 assessments on which interest is to be determined at the rate  
17 specified in this section, the calculation of interest shall  
18 use the same rates for the same periods that are used for  
19 interest assessments on delinquent payments."  
20 2. On page 3, strike lines 9 through 25 and show  
21 the old matter as stricken; in line 26 strike "(3)" and insert  
22 "(2)" and strike "or assessment"; and in line 28 strike "or  
23 assessment".  
24 3. On page 4, line 1, strike "or assessment".  
25 4. On page 10, lines 2 and 3, strike "sections 9  
26 and 15" and insert "section 13".  
27 5. On page 32, line 25, strike "77-2702.03,".  
1 6. Renumber the remaining sections accordingly.

**LEGISLATIVE BILL 5.** Placed on General File.

(Signed) Tim Hall, Chairperson

#### GENERAL FILE

**LEGISLATIVE BILL 1.** Title read. Considered.

Standing Committee amendment, AM11S4, found in this day's Journal, was adopted with 26 ayes, 0 nays, 14 present and not voting, and 9 excused and not voting.

Laid over.

**LEGISLATIVE BILL 2.** Title read. Considered.

Advanced to E & R for review with 31 ayes, 0 nays, 9 present and not voting, and 9 excused and not voting.

#### VISITORS

Visitors to the Chamber were 22 Cub Scouts and parents from Humann School, Lincoln; and Dr. Boris Shiryalv and Nina from Russia and Dr. Bill Gleason from Crete.

**ADJOURNMENT**

At 11:55 a.m., on a motion by Speaker Baack, the Legislature adjourned until 10:00 a.m., Monday, November 9, 1992.

Patrick J. O'Donnell  
Clerk of the Legislature

**FOURTH DAY - NOVEMBER 9, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Monday, November 9, 1992

Pursuant to adjournment, the Legislature met at 10:05 a.m., President Moul presiding.

**PRAYER**

The prayer was offered by Senator Lowell C. Johnson.

**ROLL CALL**

The roll was called and all members were present except Messrs. Chizek, Peterson, and Mrs. Rasmussen who were excused; and Messrs. Abboud, Ashford, Beutler, Conway, Dierks, R. Johnson, Kristensen, Landis, Lindsay, Lynch, Morrissey, Schmit, Wehrbein, Will, Withem, and Mrs. Labedz who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the third day was approved.

**SELECT COMMITTEE REPORT  
Enrollment and Review**

**LEGISLATIVE BILL 2.** Placed on Select File.

(Signed) Eric Will, Chairperson

**REPORT OF REGISTERED LOBBYISTS**

In accordance with LB 987, passed in the 1976 session of the Legislature and amended by LB 4 and LB 41 in the 1977 session of

the Legislature, the attached is a list of all Lobbyists who have registered as of November 7, 1992. Further lists listing additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell  
Clerk of the Legislature

Adams, Donald D. - Lincoln	Energy Systems Company
Boehm, John M. - Lincoln	Energy Systems Company
Johnson, Vard R. - Omaha	Commercial & Multi-Family Building Council of Metropolitan Omaha Builders Association
Knudsen, Berkheimer, Richardson & Endacott	
Mueller, William J. - Lincoln	ASARCO Incorporated Nebraska Press Association
Ruth, Larry L. - Lincoln	ASARCO Incorporated Nebraska Press Association
Lilley, Roy W. - Lincoln	Nebraska Cattlemen
Moors, H. Jack - Lincoln	First Federal Lincoln

### GENERAL FILE

#### LEGISLATIVE BILL 1. Considered.

Mr. Elmer offered the following amendment:

AM05S4

- 1 1. Insert the following new section:
- 2 "Sec. 3. That section 77-202, Revised Statutes
- 3 Supplement, 1992, be amended to read as follows:
- 4 77-202. (1) The following property shall be exempt
- 5 from property taxes:
- 6 (a) Property of the state and its governmental
- 7 subdivisions;
- 8 (b) Property owned by and used exclusively for
- 9 agricultural and horticultural societies;
- 10 (c) Property owned by educational, religious,
- 11 charitable, or cemetery organizations and used exclusively for
- 12 educational, religious, charitable, or cemetery purposes, when
- 13 such property is not (i) owned or used for financial gain or
- 14 profit to either the owner or user, (ii) used for the sale of
- 15 alcoholic liquors for more than twenty hours per week, or
- 16 (iii) owned or used by an organization which discriminates in
- 17 membership or employment based on race, color, or national
- 18 origin. For purposes of this subdivision, educational
- 19 organization shall mean an institution operated exclusively
- 20 for the purpose of offering regular courses with systematic

21 instruction in academic, vocational, or technical subjects or  
22 a museum or historical society operated exclusively for the  
23 benefit and education of the public. For purposes of this  
24 subdivision, charitable organization shall mean an  
1 organization operated exclusively for the purpose of the  
2 mental, social, or physical benefit of the public or an  
3 indefinite number of persons; and

4 (d) Household goods and personal effects not owned  
5 or used for financial gain or profit to either the owner or  
6 user.

7 (2) The increased value of land by reason of shade  
8 and ornamental trees planted along the highway shall not be  
9 taken into account in the valuation of land.

10 (3) Tangible personal property which is not  
11 depreciable tangible personal property as defined in section  
12 77-119 shall be exempt from property tax.

13 (4) Vehicles registered pursuant to section  
14 60-305.09 and for which the registration fees prescribed in  
15 such section have been paid shall be exempt from payment of  
16 property taxes.

17 (5) Business and agricultural inventory shall be  
18 exempt from the personal property tax.

19 (6) Any personal property exempt pursuant to  
20 subsection (2) of section 77-4105 shall be exempt from the  
21 personal property tax.

22 (7) Livestock shall be exempt from the personal  
23 property tax."

24 2. On page 10, lines 2 and 9, strike "9" and insert  
25 "10"; and in line 3 strike "15" and insert "16".

26 3. On page 32, line 24, after "sections" insert  
27 "77-202,".

1 4. Renumber the remaining sections accordingly.

Mr. Elmer withdrew his pending amendment.

#### **SPEAKER BAACK PRESIDING**

Mr. Warner moved for a call of the house. The motion prevailed with  
11 ayes, 0 nays, and 38 not voting.

Mr. Haberman requested a roll call vote on the advancement of the  
bill.

Voting in the affirmative, 20:

Baack	Crosby	Labedz	Nelson	Warner
Beutler	Hall	Landis	Pirsch	Wesely
Bohlke	Hillman	Lindsay	Robak	Will
Conway	Kristensen	Lynch	Schimek	Withem

Voting in the negative, 13:

Beyer	Cudaback	Hefner	Lamb	Rogers
Byars	Elmer	Horgan	Robinson	Schmit
Coordsen	Haberman	Johnson, L.		

Present and not voting, 9:

Abboud	Chambers	Johnson, R.	Schellpeper	Wickersham
Bernard-	Hartnett	Moore	Wehrbein	
Stevens				

Absent and not voting, 1:

Schrock

Excused and not voting, 6:

Ashford	Dierks	Morrissey	Peterson	Rasmussen
Chizek				

Failed to advance to E & R for review with 20 ayes, 13 nays, 9 present and not voting, 1 absent and not voting, and 6 excused and not voting.

### VISITORS

Visitors to the Chamber were 14 kindergarten through sixth grade children from the Family Service Childcare, Lincoln; Senator-Elect Don Preister; 40 fourth grade students and sponsors from Centennial Elementary, Utica; and Dick and Laura Lively from Omaha.

### RECESS

At 11:58 a.m., on a motion by Mr. Landis, the Legislature recessed until 1:30 p.m.

### AFTER RECESS

The Legislature reconvened at 1:34 p.m., Speaker Baack presiding.

**ROLL CALL**

The roll was called and all members were present except Mr. Peterson and Mrs. Rasmussen who were excused; and Messrs. Abboud, Chizek, Dierks, Horgan, Moore, Wesely, Wickersham, Withem, Mmes. Labeledz, and Robak who were excused until they arrive.

**SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following resolution: LR 1.

**GENERAL FILE**

**LEGISLATIVE BILL 5.** Title read. Considered.

**PRESIDENT MOUL PRESIDING**

Mr. Haberman moved to indefinitely postpone LB 5.

Laid over.

**LEGISLATIVE BILL 1.** Mr. Schrock offered the following amendment:

AM45S4

- 1 1. On page 21, line 3, after "dollars" insert "or
- 2 two hundred dollars per full-time employee, whichever is
- 3 less".

Mr. Schrock withdrew his pending amendment.

Mr. Coordsen offered the following amendment:

FA1S4

Strike Section 13 in LB 1

Ms. Schimek and Mrs. Bohlke asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Coordsen moved for a call of the house. The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

Mr. Coordsen requested a roll call vote on his amendment.

Voting in the affirmative, 20:

Abboud	Cudaback	Hefner	Lamb	Rogers
Beyer	Elmer	Johnson, L.	Moore	Schellpeper
Byars	Haberman	Johnson, R.	Nelson	Schmit
Coordsen	Hartnett	Kristensen	Pirsch	Schrock

Voting in the negative, 18:

Baack	Chizek	Hillman	Morrissey	Wesely
Bernard-	Conway	Landis	Robak	Will
Stevens	Crosby	Lindsay	Warner	Withem
Beutler	Hall	Lynch	Wehrbein	

Present and not voting, 5:

Chambers	Horgan	Labeledz	Robinson	Wickersham
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Absent and not voting, 1:

Ashford

Excused and not voting, 5:

Bohlke	Dierks	Peterson	Rasmussen	Schimek
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The Coordsen amendment lost with 20 ayes, 18 nays, 5 present and not voting, 1 absent and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Mr. Haberman moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

Mr. Warner moved for a call of the house. The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

Mr. Lamb requested a record vote on the advancement of the bill.

Voting in the affirmative, 26:

Ashford	Beutler	Crosby	Kristensen	Lynch
Baack	Bohlke	Hall	Labeledz	Morrissey
Bernard-	Chizek	Hartnett	Landis	Nelson
Stevens	Conway	Hillman	Lindsay	Robak



Schimek	Wehrbein	Wickersham	Will	Withem
Warner	Wesely			

Voting in the negative, 17:

Abboud	Cudaback	Horgan	Pirsch	Schellpeper
Beyer	Elmer	Johnson, L.	Robinson	Schmit
Byars	Haberman	Lamb	Rogers	Schrock
Coordsen	Hefner			

Present and not voting, 3:

Chambers	Johnson, R.	Moore
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Excused and not voting, 3:

Dierks	Peterson	Rasmussen
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Advanced to E & R for review with 26 ayes, 17 nays, 3 present and not voting, and 3 excused and not voting.

### VISITORS

Visitors to the Chamber were Senator-Elect Dwite Pedersen, District 39; and Senator Lynch's daughter and granddaughter, Julie and Katie Freeman.

### ADJOURNMENT

At 3:08 p.m., on a motion by Speaker Baack, the Legislature adjourned until 9:00 a.m., Tuesday, November 10, 1992.

Patrick J. O'Donnell  
Clerk of the Legislature



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**FIFTH DAY - NOVEMBER 10, 1992**

**LEGISLATIVE JOURNAL**

**FIFTH DAY - NOVEMBER 10, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, November 10, 1992

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Moul presiding.

**PRAYER**

The prayer was offered by Senator Elroy Hefner.

**MR. CONWAY PRESIDING**

**ROLL CALL**

The roll was called and all members were present except Mr. Peterson who was excused; and Messrs. Abboud, Ashford, Byars, Chambers, Hartnett, R. Johnson, Lindsay, Morrissey, Schmit, Wehrbein, Mmes. Labedz, and Robak who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fourth day was approved.

**SELECT COMMITTEE REPORT  
Enrollment and Review**

**LEGISLATIVE BILL 1.** Placed on Select File as amended.  
E & R amendment to LB 1:  
AM5317

- 1           1. On page 1, line 4, strike "77-2702.03,"; in line
- 2   6 strike "or assessment"; in line 8 strike "to define a
- 3   term,"; and in line 11 after "and" insert "for a".

(Signed) Eric Will, Chairperson

**STANDING COMMITTEE REPORT**  
**Banking, Commerce and Insurance**

The Committee on Banking, Commerce and Insurance desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Bruce W. Bisson - Nebraska Investment Council

VOTE: Aye: Senators Landis, Conway, Hall, Lindsay, and Wesely.  
Absent: Senators Schmit, Abboud, and Haberman.

(Signed) David Landis, Chairperson

**SELECT FILE**

**LEGISLATIVE BILL 2.** Mr. Warner offered the following amendment:

AM47S4

- 1 1. On page 2, line 1, strike "\$33,763" and insert
- 2 "\$27,350"; in line 5 strike "\$28,713" and insert "\$20,299";
- 3 and in line 10 strike "\$7,509" and insert "\$5,929".

The Warner amendment was adopted with 25 ayes, 0 nays, 11 present and not voting, and 13 excused and not voting.

Advanced to E & R for engrossment.

**VISITORS**

Visitors to the Chamber were Jon Genrich from Beatrice; and Senator-Elect Ramon Janssen, District 15, from Nickerson.

**RECESS**

At 9:32 a.m., on a motion by Speaker Baack, the Legislature recessed until 11:00 a.m.

**AFTER RECESS**

The Legislature reconvened at 11:02 a.m., Speaker Baack presiding.

**ROLL CALL**

The roll was called and all members were present except Mr. Peterson who was excused; and Messrs. Abboud, Beyer, Byars, Hartnett, Kristensen, Lindsay, Lynch, Morrissey, Schmit, Mmes. Bohlke, Labedz, Pirsch, and Robak who were excused until they arrive.

**RECESS**

At 11:04 a.m., on a motion by Mr. Conway, the Legislature recessed until 1:30 p.m.

**AFTER RECESS**

The Legislature reconvened at 1:31 p.m., President Moul presiding.

**ROLL CALL**

The roll was called and all members were present except Mr. Peterson who was excused; and Messrs. Abboud, Ashford, Byars, Morrissey, Mmes. Nelson, and Rasmussen who were excused until they arrive.

**REPORT**

Received annual report from the Nebraska Research and Development Authority.

**ATTORNEY GENERAL'S OPINION**Opinion No. 92122

DATE: November 10, 1992

SUBJECT: Exemption of Livestock from Property Taxation  
Under Neb. Const. art. VIII, §§ 1 & 2, as  
Amended.

REQUESTED BY: Senator Howard A. Lamb  
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to the constitutionality of the Legislature's establishment of livestock as a class of personal property

exempt from taxation.<sup>1</sup> Specifically, you ask whether the exemption of livestock would be permissible under the provisions of Neb. Const. art. VIII, §§ 1 and 2 as recently amended by the adoption of Amendment 1.

Neb. Const. art. VIII, § 1, as amended, provides, in part, as follows: Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 4, of this Constitution or any other provision of this Constitution to the contrary: . . . (2) tangible personal property, as defined by the Legislature, not exempted by this Constitution or by legislation, shall all be taxed at depreciated cost using the same depreciation method with reasonable class lives, as determined by the Legislature, or shall all be taxed by valuation uniformly and proportionately; . . . (Emphasis added).

Neb. Const. art. VIII, § 2, as amended, provides, in pertinent part: Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: . . . (9) the Legislature may define and classify personal property in such manner as it sees fit, whether by type, use, user, or owner, and may exempt any such class or classes of property from taxation if such exemption is reasonable or may exempt all personal property from taxation; . . . (Emphasis added).

In Attorney General Opinion No. 92005, January 10, 1992, this office addressed, in part, "whether a legislative classification exempting all livestock from property taxation would create an unconstitutional classification if the Legislature were to also enact a tax on depreciable tangible personal property (other than depreciable livestock) based on its "depreciated value." *Id.* at 1. After analyzing the standards set forth by the Nebraska Supreme Court in judging the reasonableness of legislative classifications under the prohibition against "special legislation" contained in Neb. Const. art. III, § 18, we concluded as follows:

In our view, legislative enactment of a classification of this nature would violate the special legislation prohibition in Article III, § 18, as it would create an impermissible difference in treatment between similar property of the same class without the existence of any "real and substantial difference" justifying different treatment of some personal property within the class of depreciable personal property (depreciable livestock) and all other depreciable personal property.

Id. at 3-4.

In this opinion, therefore, we expressed the view that legislation providing for different tax treatment by exempting depreciable livestock from the class of depreciable tangible personal property subject to taxation would violate Article III, § 18, as creating an unreasonable

classification. Amendment 1, however, amended Article VIII, § 2, to provide, in part:

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 2, of this Constitution or any other provision of this Constitution to the contrary: . . . (9) the Legislature may define and classify personal property in such a manner as it sees fit, whether by type, use, user, or owner, and may exempt any such classes or classes of property from taxation if such exemption is reasonable or may exempt all personal property from taxation; . . . (Emphasis added).

Article VIII, § 2, as amended, thus provides an exception to the application of the prohibition in Article III, § 18 (or, for that matter, any other constitutional provision) with respect to the Legislature's exemption of personal property from taxation under this provision. This section, as amended, requires only that the exemption be "reasonable," a standard which, assuming our state supreme court would not interpret to be the equivalent of the "real and substantial difference" test employed in judging classifications under Article III, § 18, we believe a classification of exempt property consisting of all livestock would satisfy.

The remaining question would be whether the establishment of an exemption from property taxation for all livestock under state law would constitute a permissible classification under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, when tangible personal property generally is classified as taxable based on its "depreciated cost." We addressed this question in both Opinion No. 92005 and Attorney General Opinion No. 92015, February 6, 1992. In Opinion No. 92005, we concluded that, "given the limited judicial scrutiny applicable to state tax classifications under the rational basis standard of review under the federal equal protection clause, such a classification would not be wholly indefensible." We further stated:

Although the question is not free from doubt, we believe that a sound argument can be made that a rational basis exists to support the different classification and taxation of livestock (including depreciable livestock) and other depreciable personal property. The livestock industry is vitally important to the State of Nebraska. It generates income not only to those who own and sell livestock, but to grain farmers, livestock processing operations, and others. Nebraska cattlemen must compete with other states where livestock may not be subject to property taxation. Because of its potential for substantial market price fluctuations, the industry is recognized as a particularly risky one.

Id. at 5. We reiterated this view in Opinion No. 92015, in which we stated:



We do not believe that the establishment of an exemption for all livestock under state law would, necessarily, violate the Fourteenth Amendment guarantee of equal protection, even if other types of tangible personal property remained subject to taxation. . . . The exemption of livestock, including breeding livestock, is not irrational, and . . . plainly furthers legitimate state purposes, given the importance of the entire industry to the state.

Id. at 2.

Based on the foregoing, it is our opinion that, subject to the qualifications noted above, the exemption of all livestock (including breeding livestock, both depreciable and non-depreciable), would likely not be held to violate either the State Constitution or the equal protection clause of the Fourteenth Amendment to the United States Constitution.

<sup>1</sup> While your request refers solely to the exemption of "breeding livestock," we assume that your reference specifically to "breeding livestock" results from the fact that certain breeding livestock is presently subject to property taxation based on its "depreciated cost," while other breeding livestock, as well as other livestock, is non-depreciable and not subject to taxation. In effect, therefore, we assume your request is intended to address the validity of the establishment of all livestock as a class of personal property exempt from taxation, as is proposed under LB 3 and LB 8, which have been introduced in the current special session.

Very truly yours,  
DON STENBERG  
Attorney General

(Signed) L. Jay Bartel  
Assistant Attorney General

cc: Patrick O'Donnell  
Clerk of the Legislature  
7-513-7.17

#### SELECT FILE

**LEGISLATIVE BILL 1.** E & R amendment, AM5317, found in this day's Journal, was adopted.

Mr. Coordsen offered the following amendment:  
FA2S4

Amend LB 1 as follows

That Section 77-202 RSS be amended by adding "Livestock shall be exempted from the personal property tax on Jan 1, 1993

Mr. Lamb requested a record vote on the Coordsen amendment.

Voting in the affirmative, 19:

Bernard-	Cudaback	Hefner	Moore	Schmit
Stevens	Dierks	Johnson, L.	Robinson	Schrock
Beyer	Elmer	Johnson, R.	Rogers	Wehrbein
Coordsen	Haberman	Lamb	Schellpeper	Wickersham

Voting in the negative, 16:

Baack	Hall	Horgan	Pirsch	Wesely
Beutler	Hartnett	Landis	Robak	Will
Bohlke	Hillman	Lindsay	Warner	Withem
Chizek				

Present and not voting, 7:

Chambers	Crosby	Labeledz	Lynch	Schimek
Conway	Kristensen			

Excused and not voting, 7:

Abboud	Byars	Nelson	Peterson	Rasmussen
Ashford	Morrissey			

The Coordsen amendment lost with 19 ayes, 16 nays, 7 present and not voting, and 7 excused and not voting.

Mr. Hartnett offered the following amendment:

AM55S4

- 1           1. On page 28, line 25, after "depreciation" insert
- 2    "for tangible personal property".
- 3           2. On page 29, lines 8, 14, and 15, insert
- 4    "personal" after each occurrence of "tangible".

Mr. Hartnett moved for a call of the house. The motion prevailed with 29 ayes, 0 nays, and 20 not voting.

Mr. Hartnett requested a roll call vote on his amendment.

Voting in the affirmative, 18:

Abboud	Beutler	Beyer	Chizek	Crosby
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Elmer	Hefner	Labeledz	Schmit	Wesely
Haberman	Horgan	Pirsch	Schrock	Will
Hartnett	Johnson, L.	Rogers		

Voting in the negative, 12:

Baack	Hillman	Landis	Moore	Warner
Bohlke	Johnson, R.	Lynch	Robak	Wickersham
Hall	Kristensen			

Present and not voting, 13:

Bernard-	Conway	Lamb	Robinson	Wehrbein
Stevens	Coordsen	Lindsay	Schellpeper	Withem
Chambers	Cudaback	Nelson	Schimek	

Absent and not voting, 1:

Dierks

Excused and not voting, 5:

Ashford	Byars	Morrissey	Peterson	Rasmussen
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The Hartnett amendment lost with 18 ayes, 12 nays, 13 present and not voting, 1 absent and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Mr. Abboud asked unanimous consent to be excused until he returns.  
No objections. So ordered.

Mr. Hall offered the following amendment:  
(Amendment on file in the Clerk's Office - Room 2018 - AM57S4.)

Mr. Hall requested a division of the question on his amendment.

The Chair sustained the division of the question.

The first Hall amendment is as follows:  
(Amendment on file in the Clerk's Office - Room 2018 - FA3S4.)

The first Hall amendment was adopted with 29 ayes, 0 nays, 15 present and not voting, and 5 excused and not voting.

The second Hall amendment is as follows:

(Amendment on file in the Clerk's Office - Room 2018 - FA4S4.)

The second Hall amendment was adopted with 26 ayes, 0 nays, 19 present and not voting, and 4 excused and not voting.

Mr. Schmit offered the following amendment:

FA5S4

1. On page 21, line 2, strike "not exceed", show stricken and insert "be the lesser of", and in line 3 after "dollars" insert "or \$200 per full time employee".

Mr. Schmit moved for a call of the house. The motion prevailed with 21 ayes, 0 nays, and 28 not voting.

Mr. Schmit requested a roll call vote on his amendment.

Voting in the affirmative, 21:

Beyer	Haberman	Johnson, R.	Pirsch	Schmit
Coordsen	Hartnett	Labeledz	Robinson	Schrock
Crosby	Hefner	Lamb	Rogers	Wehrbein
Cudaback	Johnson, L.	Moore	Schellepeper	Wesely
Elmer				

Voting in the negative, 11:

Abboud	Hillman	Landis	Nelson	Warner
Baack	Kristensen	Lindsay	Schimek	Will
Hall				

Present and not voting, 13:

Ashford	Beutler	Chizek	Horgan	Wickersham
Bernard-	Bohlke	Conway	Lynch	Withem
Stevens	Chambers	Dierks	Robak	

Excused and not voting, 4:

Byars	Morrissey	Peterson	Rasmussen
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The Schmit amendment lost with 21 ayes, 11 nays, 13 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Mr. Ashford moved to reconsider the Hartnett amendment, AM55S4, found in this day's Journal.

The Ashford motion to reconsider lost with 14 ayes, 16 nays, 15 present and not voting, and 4 excused and not voting.

Mrs. Hillman moved to reconsider the Hall amendment, FA4S4, found in this day's Journal.

Mrs. Labedz and Mr. Abboud asked unanimous consent to be excused until they return. No objections. So ordered.

Mrs. Hillman moved for a call of the house. The motion prevailed with 22 ayes, 0 nays, and 27 not voting.

Mrs. Hillman requested a roll call vote on her motion to reconsider the Hall amendment, FA4S4.

Voting in the affirmative, 22:

Baack	Bohlke	Elmer	Kristensen	Schellpeper
Bernard-	Chizek	Hall	Lindsay	Warner
Stevens	Conway	Hillman	Robak	Wickersham
Bentler	Coordsen	Horgan	Rogers	Will
Beyer	Cudaback	Johnson, R.		

Voting in the negative, 17:

Ashford	Johnson, L.	Moore	Robinson	Schrock
Chambers	Lamb	Nelson	Schimek	Wehrbein
Crosby	Landis	Pirsch	Schmit	Wesely
Dierks	Lynch			

Present and not voting, 4:

Haberman	Hartnett	Hefner	Withem
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Excused and not voting, 6:

Abboud	Labedz	Morrissey	Peterson	Rasmussen
Byars				

The Hillman motion to reconsider lost with 22 ayes, 17 nays, 4 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Mr. Baack offered the following amendment:

AM67S4

1           1. Insert the following new sections:

2           "Sec. 8. That section 77-2702.03, Revised Statutes  
3 Supplement, 1992, be amended to read as follows:

4           77-2702.03. For purposes of sections 77-2703 to  
5 77-2713 and section 11 of this act, unless the context  
6 otherwise requires, the definitions found in sections  
7 77-2702.04 to 77-2702.23 shall be used.

8           Sec. 11. Sales and use tax shall not be imposed on  
9 the gross receipts from the sale, lease, or rental of  
10 agricultural machinery and equipment purchased, leased, or  
11 rented on or after the effective date of this act, for use in  
12 commercial agriculture.

13          Sec. 13. That section 77-2708.01, Revised Statutes  
14 Supplement, 1992, be amended to read as follows:

15          77-2708.01. (1) Any purchaser of depreciable  
16 agricultural machinery or equipment purchased on or after  
17 January 1, 1992, and before the effective date of this act,  
18 for use in commercial agriculture may apply for a refund of  
19 all of the Nebraska sales or use taxes and all of the local  
20 option sales or use taxes paid on the machinery or equipment.

21          (2) The purchaser shall file a claim within three  
22 years after the date of purchase with the Tax Commissioner  
23 pursuant to section 77-2708. The information provided on a  
24 tax refund claim allowed under this section may be disclosed  
1 to any other tax official of this state.

2          Sec. 17. That section 77-4401, Revised Statutes  
3 Supplement, 1992, be amended to read as follows:

4          77-4401. (1) Except as otherwise provided in this  
5 section, commencing April 1, 1992, through December 31, 1992,  
6 there shall be imposed a fee of four three dollars per ton  
7 upon the gross tonnage of all sales, use, or other consumption  
8 in this state of commercial fertilizers, and commencing  
9 January 1, 1993, there shall be imposed a fee of four dollars  
10 per ton upon the gross tonnage of all sales, use, or other  
11 consumption in this state of commercial fertilizers. The fee  
12 shall be paid by the purchaser of the commercial fertilizer.  
13 Any commercial fertilizer subject to the sales and use tax  
14 pursuant to the Nebraska Revenue Act of 1967 shall be exempt  
15 from the fee imposed by this section. For purposes of this  
16 section, the definitions found in section 81-2,162.02 shall

17 apply.

18 (2) The fee imposed by this section shall be  
 19 collected by the seller and remitted to the Department of  
 20 Revenue for credit to the General Fund, based on the gross  
 21 tonnage of commercial fertilizers sold during the preceding  
 22 period. Payment of the fee shall be accompanied by a report  
 23 setting forth the gross tonnage of commercial fertilizers sold  
 24 by the seller. The report shall be on a form prescribed by the  
 25 Department of Revenue and shall include such other information  
 26 as the Tax Commissioner deems necessary. The provisions of  
 27 the Nebraska Revenue Act of 1967 applicable to sales and use  
 1 taxes shall apply to imposition of the fee.

2 (3) For purposes of this section, gross tonnage  
 3 shall not include water and other carriers added by the retail  
 4 seller of the fertilizer and shall not include sales of  
 5 packages of fertilizers containing ten pounds or less.

6 (4) Any person who purchased commercial fertilizer  
 7 prior to January 1, 1993, and paid a fee greater than three  
 8 dollars per ton shall be entitled to a refund of the amount  
 9 paid in excess of three dollars per ton.

10 (5) The Tax Commissioner shall adopt and promulgate  
 11 rules and regulations to carry out this section."

12 2. On page 10, lines 2 and 3, strike the new matter  
 13 and all amendments thereto and insert "and sections 11 and 16  
 14 of this act".

15 3. On page 32, line 25, after the fourth comma  
 16 insert "77-2702.03,"; and in line 26 after the second comma  
 17 insert "77-2708.01," strike "and", and after the last comma  
 18 insert ", and 77-4401,".

19 4. Renumber the remaining sections accordingly.

Mr. Moore offered the following amendment to the pending Baack  
 amendment:

AM69S4

(Amendments to AM67S4)

1 1. Insert the following new section:  
 2 "Sec. 12. The exemption granted in section 11 of  
 3 this act shall be conditioned upon filing requirements for the  
 4 exemption as imposed by the Tax Commissioner. The  
 5 requirements imposed by the Tax Commissioner shall be related  
 6 to (1) ensuring that the property purchased qualifies for the  
 7 exemption and (2) ensuring that relevant information on the  
 8 property purchased is available to local governmental  
 9 officials for personal property tax collection purposes. Any  
 10 information received pursuant to the requirements of this

11 section may be disclosed to any tax official in this state.  
 12 Any taxpayer who provides false information on the forms  
 13 required by the Tax Commissioner for purposes of this section  
 14 shall be subject to the penalties provided in subsection (8)  
 15 of section 77-2705."

16 2. On page 1, line 5, strike "section 11" and  
 17 insert "sections 11 and 12".

18 3. On page 3, line 13, strike "and 16" and insert  
 19 "12, and 17".

20 4. Renumber the remaining sections accordingly.

The Moore amendment was adopted with 25 ayes, 0 nays, 19 present and not voting, and 5 excused and not voting.

Messrs. Hall and Warner offered the following amendment to the pending Baack amendment:

FA6S4

Amend the Baack amendment AM67S4

1) on page 1 lines 11 & 17, strike "The effective date of this act", and insert "January 1, 1993"

The Hall-Warner amendment was adopted with 25 ayes, 0 nays, 19 present and not voting, and 5 excused and not voting.

Messrs. Baack and Hall offered the following amendment to the pending Baack amendment:

FA7S4

1) On page 2, line 5, strike "December 31, 1992" and insert "April 30, 1993"

2) On page 2 line 9 and page 3 line 7, strike "January" and insert "May"

The Baack-Hall amendment was adopted with 25 ayes, 0 nays, 19 present and not voting, and 5 excused and not voting.

Mr. Rogers asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Haberman requested a point of personal privilege that the Clerk read the Baack amendment, as amended.

Mr. Withem raised a point of order on whether the Haberman point of personal privilege is out of order.



The Chair ruled the Haberman request should not be raised as a point of personal privilege.

The Baack pending amendment, AM67S4, as amended, was adopted with 27 ayes, 3 nays, 13 present and not voting, and 6 excused and not voting.

Mr. Warner offered the following amendment:  
FA8S4

1. Strike Hall amendment on LB 1, p. 30, lines 26-28.

Mr. Chambers requested a ruling of the Chair on whether the Warner amendment is, in effect, a reconsideration of a motion to reconsider.

The Chair ruled the Warner amendment was a reconsideration of a motion to reconsider the Hall amendment.

Mr. Warner moved to suspend the rules, Rule 7, Section 7(a), to permit consideration of the Warner amendment to LB 1.

Messrs. Lindsay and Schmit asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Warner moved for a call of the house. The motion prevailed with 16 ayes, 0 nays, and 33 not voting.

Mr. Warner requested a roll call vote on his motion to suspend the rules.

Voting in the affirmative, 29:

Abboud	Beyer	Cudaback	Johnson, R.	Schellpeper
Ashford	Bohlke	Dierks	Kristensen	Schrock
Baack	Chizek	Elmer	Landis	Warner
Bernard-	Conway	Hall	Nelson	Wehrbein
Stevens	Coordsen	Hillman	Robak	Wickersham
Beutler	Crosby	Horgan	Robinson	Will

Voting in the negative, 8:

Chambers	Lamb	Morrissey	Wesely	Withem
Hartnett	Moore	Schimek		

Present and not voting, 5:

Haberman      Hefner      Johnson, L.      Lynch      Pirsch

Excused and not voting, 7:

Byars      Lindsay      Rasmussen      Rogers      Schmit  
Labedz      Peterson

The Warner motion to suspend the rules lost with 29 ayes, 8 nays, 5 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Advanced to E & R for engrossment.

Messrs. Ashford and Chizek asked unanimous consent to be excused until they return. No objections. So ordered.

#### **MOTION - Return LB 2 to Select File**

Mr. Moore moved to return LB 2 to Select File for the following specific amendment:

AM63S4

- 1                    1. Insert the following new section:
- 2                    "Sec. 4. There is hereby appropriated (1) \$325,000
- 3                    from the General Fund for FY1992-93 and (2) \$125,000 from the
- 4                    General Fund for FY1993-94 to the Department of Revenue, for
- 5                    Program 102, to aid in carrying out the provisions of
- 6                    Legislative Bill 1, Ninety-second Legislature, Fourth Special
- 7                    Session, 1992.
- 8                    Total expenditures for permanent and temporary
- 9                    salaries and per diems from funds appropriated in this section
- 10                   shall not exceed \$100,000 for FY1992-93 or \$75,000 for
- 11                   FY1993-94."
- 12                   2. Renumber remaining section accordingly.

#### **SPEAKER BAACK PRESIDING**

#### **PRESIDENT MOUL PRESIDING**

The Moore motion to return prevailed with 26 ayes, 5 nays, 9 present and not voting, and 9 excused and not voting.

Mr. Withem asked unanimous consent to be excused until he returns. No objections. So ordered.

**SELECT FILE**

**LEGISLATIVE BILL 2.** The Moore specific amendment, AM63S4, found in this day's Journal, was adopted with 25 ayes, 1 nay, 13 present and not voting, and 10 excused and not voting.

Advanced to E & R for engrossment.

**MOTION - Return LB 1 to Select File**

Mr. Bernard-Stevens moved to return LB 1 to Select File for the following specific amendment:

FA9S4

Amendment to LB 1

1. Page 30 of LB 1, line 26, strike beginning with property through line 28, and insert sales factor contained in section 77-2734.14.

Mr. Bernard-Stevens moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

The Bernard-Stevens motion to return prevailed with 25 ayes, 7 nays, 7 present and not voting, and 10 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 1.** The Bernard-Stevens specific amendment, FA9S4, found in this day's Journal, was considered.

The Chair declared the call raised.

Mr. Chambers requested a ruling of the Chair on whether the Bernard-Stevens specific amendment is, in effect, a reconsideration of a motion to reconsider.

The Chair ruled the Bernard-Stevens amendment is not a reconsideration, because the bill is at a different stage of debate.

Mr. Chambers challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

Mr. Beutler asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Chambers moved for a call of the house. The motion prevailed with 16 ayes, 0 nays, and 33 not voting.

Mr. Chambers requested a roll call vote on his motion to overrule the Chair.

Voting in the affirmative, 19:

Abboud	Elmer	Horgan	Lynch	Schimek
Chambers	Haberman	Johnson, L.	Moore	Wesely
Crosby	Hartnett	Lamb	Morrissey	Will
Dierks	Hefner	Landis	Robak	

Voting in the negative, 16:

Baack	Bohlke	Hillman	Robinson	Warner
Bernard-	Conway	Johnson, R.	Schellpeper	Wehrbein
Stevens	Coordsen	Kristensen	Schrock	Wickersham
Beyer	Cudaback			

Present and not voting, 3:

Byars	Hall	Nelson
-------	------	--------

Excused and not voting, 11:

Ashford	Labedz	Peterson	Rasmussen	Schmit
Beutler	Lindsay	Pirsch	Rogers	Withem
Chizek				

The Chambers motion to overrule the Chair lost with 19 ayes, 16 nays, 3 present and not voting, and 11 excused and not voting.

The Chair was sustained.

The Chair declared the call raised.

Mr. Landis asked unanimous consent to be excused until he returns. No objections. So ordered.

The pending Bernard-Stevens specific amendment, FA9S4, found in this day's Journal, was renewed.

Mr. Chambers requested a record vote on the Bernard-Stevens specific amendment.

Voting in the affirmative, 25:

Baack	Conway	Hillman	Morrissey	Schrock
Bernard-	Coordsen	Horgan	Nelson	Warner
Stevens	Cudaback	Johnson, R.	Robak	Wehrbein
Beutler	Dierks	Kristensen	Robinson	Wickersham
Bohlke	Hall	Moore	Schellpeper	Will
Byars				

Voting in the negative, 4:

Beyer	Chambers	Lamb	Schimek
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Present and not voting, 9:

Abboud	Elmer	Hartnett	Johnson, L.	Wesely
Crosby	Haberman	Hefner	Lynch	

Excused and not voting, 11:

Ashford	Landis	Peterson	Rasmussen	Schmit
Chizek	Lindsay	Pirsch	Rogers	Withem
Labadz				

The Bernard-Stevens specific amendment was adopted with 25 ayes, 4 nays, 9 present and not voting, and 11 excused and not voting.

Mr. Abboud asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Chambers requested a machine vote on the advancement of the bill.

Mr. Warner moved for a call of the house. The motion prevailed with 23 ayes, 0 nays, and 26 not voting.

Mr. Warner requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 25:

Baack	Coordsen	Hillman	Nelson	Warner
Bernard-	Crosby	Kristensen	Robak	Wehrbein
Stevens	Cudaback	Lamb	Robinson	Wesely
Beutler	Dierks	Lynch	Schellpeper	Wickersham
Bohlke	Hall	Morrissey	Schimek	Will
Conway				

Voting in the negative, 8:

Beyer	Chambers	Hefner	Johnson, L.	Schrock
Byars	Haberman	Horgan		

Present and not voting, 4:

Elmer	Hartnett	Johnson, R.	Moore
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Excused and not voting, 12:

Abboud	Labedz	Peterson	Rasmussen	Schmit
Ashford	Landis	Pirsch	Rogers	Withem
Chizek	Lindsay			

Advanced to E & R for engrossment with 25 ayes, 8 nays, 4 present and not voting, and 12 excused and not voting.

The Chair declared the call raised.

## RESOLUTION

### LEGISLATIVE RESOLUTION 5. Introduced by Lamb, 43.

WHEREAS, Ainsworth, Nebraska, has hosted the Annual National Country Music Festival for twenty-two years; and

WHEREAS, the Annual National Country Music Festival is truly a community effort involving hundreds of citizens and volunteer organizations and thousands of volunteer hours; and

WHEREAS, visitors to Ainsworth to attend the 1992 Annual National Country Music Festival came from the Philippines, Japan, and more than a dozen states; and

WHEREAS, the 1992 Annual National Country Music Festival had a new record of 114 contestants, and the festival won three awards from the Country Music Showcase International.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SECOND LEGISLATURE OF NEBRASKA, FOURTH SPECIAL SESSION:

1. That the Legislature congratulates the city and the people of Ainsworth, festival organizers, and volunteers for the success of the 22nd Annual National Country Music Festival.

2. That the Legislature designates Ainsworth as the Country Music Capital of Nebraska.

3. That a copy of this resolution be sent to the Ainsworth Chamber of Commerce.

Laid over.

**STANDING COMMITTEE REPORT**  
**Natural Resources**

The Committee on Natural Resources desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Dr. Charles Blaha - Nebraska Game and Parks Commission

VOTE: Aye: Senators Beutler, Elmer, Hartnett, Horgan, and R. Johnson. Nay: none. Not Voting: none. Absent: Senators Lamb, Morrissey, and Schmit.

(Signed) Rod Johnson, Chairperson

**EASE**

The Legislature was at ease from 5:58 p.m. until 7:11 p.m.

**SPEAKER BAACK PRESIDING**

**SELECT COMMITTEE REPORTS**  
**Enrollment and Review**

**Correctly Engrossed**

The following bills were correctly engrossed: 1 and 2.

**Enrollment and Review Change to LB 1**

The following changes, required to be reported for publication in the Journal, have been made:

ER7194

1. In the Baack amendment, AM67S4, on page 1, line 5, "section 11" and all amendments thereto have been struck and "sections 24 and 25" inserted.

2. On page 1, the matter beginning with "21-330" in line 1 through line 5 and all amendments thereto have been struck and "21-330, 21-20,139, 45-104.01, 57-710, 57-717, 57-919, 70-1020, 74-1320, 76-711, 76-719.01, 77-918, 77-2618, 77-2709, 77-2769.01, and

77-4022, Reissue Revised Statutes of Nebraska, 1943, and sections 32-1607, 66-724, 77-1510, 77-1735, 77-1736.07, 77-1775.01, 77-2102, 77-2106.01, 77-2701, 77-2702.03, 77-2703, 77-2704.13, 77-2708, 77-2708.01, 77-2711, 77-2716.02, 77-2734.17, 77-2788, 77-2792, 77-2794, 77-4312, 77-4401, and 81-2404, Revised Statutes Supplement," inserted; in line 8 "to exempt agricultural machinery and equipment from the sales and use tax;" has been inserted after the first semicolon; and in line 14 "to change provisions relating to a fee on commercial fertilizers;" has been inserted after the first semicolon.

3. On page 10, lines 2 and 3, "sections 9 and 15" and all amendments thereto have been struck and "sections 24, 25, and 34" inserted.

### **Enrollment and Review Change to LB 2**

The following changes, required to be reported for publication in the Journal, have been made:

ER7195

1. On page 1, line 3, "to appropriate funds to aid in carrying out the provisions of Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992;" has been inserted after the semicolon.

(Signed) Eric Will, Chairperson

### **VISITOR**

Visitor to the Chamber was Senator-Elect Carol Hudkins, District 21, from Malcolm.

### **ADJOURNMENT**

At 7:12 p.m., on a motion by Mr. Warner, the Legislature adjourned until 9:00 a.m., Wednesday, November 11, 1992.

Patrick J. O'Donnell  
Clerk of the Legislature



**SIXTH DAY - NOVEMBER 11, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**SIXTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, November 11, 1992

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Moul presiding.

**PRAYER**

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

**ROLL CALL**

The roll was called and all members were present except Messrs. Ashford, Beyer, Chambers, Chizek, Hall, Hartnett, Horgan, R. Johnson, Kristensen, Lindsay, Morrissey, Peterson, Robinson, Schellpeper, Wehrbein, Wickersham, Will, Mmes. Labedz, Pirsch, and Rasmussen who were excused.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifth day was approved.

**ANNOUNCEMENT**

The Chair announced today is Speaker Baack's birthday.

**MOTION - Return LB 1 to Select File**

Mr. Lamb moved to return LB 1 to Select File for the following specific amendment:

FA10S4

Strike the enacting clause.

Mr. Landis asked unanimous consent to be excused until he returns.  
No objections. So ordered.

**SPEAKER BAACK PRESIDING**

Mr. Lamb withdrew his motion to return LB 1 to Select File.

**VISITOR**

Visitor to the Chamber was Senator-Elect Connie Day, District 19.

**ADJOURNMENT**

At 10:17 a.m., on a motion by Mrs. Crosby, the Legislature adjourned  
until 9:00 a.m., Thursday, November 12, 1992.

Patrick J. O'Donnell  
Clerk of the Legislature

**SEVENTH DAY - NOVEMBER 12, 1992**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, November 12, 1992

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Moul presiding.

**PRAYER**

The prayer was offered by Senator Dennis Byars.

**ROLL CALL**

The roll was called and all members were present except Messrs. Peterson and Schmit who was excused; and Messrs. Bernard-Stevens, Beutler, Haberman, R. Johnson, Lynch, Morrissey, Schellpeper, Mrs. Rasmussen, and Ms. Schimek who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the sixth day was approved.

**RESOLUTION**

**LEGISLATIVE RESOLUTION 5.** Read. Considered.

LR 5 was adopted with 26 ayes, 0 nays, and 23 not voting.

**MOTION - Approve Appointments**

Mr. Landis moved the adoption of the report of the Banking, Commerce and Insurance Committee for the following Governor appointment found in the Journal on page 35: Bruce W. Bisson - Nebraska Investment Council.

Voting in the affirmative, 29:

Abboud	Chizek	Hefner	Lindsay	Wehrbein
Ashford	Coordsen	Horgan	Moore	Wesely
Baack	Crosby	Johnson, L.	Pirsch	Wickersham
Beyer	Dierks	Johnson, R.	Robak	Will
Bohlke	Elmer	Lamb	Schrock	Withem
Chambers	Hartnett	Landis	Warner	

Voting in the negative, 0.

Present and not voting, 10:

Byars	Cudaback	Hillman	Labedz	Robinson
Conway	Hall	Kristensen	Nelson	Rogers

Excused and not voting, 10:

Bernard- Stevens	Haberman	Morrissey	Rasmussen	Schimek
Beutler	Lynch	Peterson	Schellpeper	Schmit

The appointment was confirmed with 29 ayes, 0 nays, 10 present and not voting, and 10 excused and not voting.

Mr. R. Johnson moved the adoption of the report of the Natural Resources Committee for the following Governor appointment found in the Journal on page 53: Dr. Charles Blaha - Nebraska Game and Parks Commission.

Voting in the affirmative, 26:

Abboud	Conway	Horgan	Lindsay	Warner
Ashford	Coordsen	Johnson, L.	Moore	Wehrbein
Baack	Crosby	Johnson, R.	Pirsch	Wesely
Beyer	Hall	Kristensen	Robak	Will
Bohlke	Hefner	Labedz	Robinson	Withem
Chambers				

Voting in the negative, 0.

Present and not voting, 13:

Byars	Chizek	Cudaback	Dierks	Elmer
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Hartnett	Lamb	Nelson	Schrock	Wickersham
Hillman	Landis	Rogers		

Excused and not voting, 10:

Bernard-	Haberman	Morrissey	Rasmussen	Schimek
Stevens	Lynch	Peterson	Schellpeper	Schmit
Beutler				

The appointment was confirmed with 26 ayes, 0 nays, 13 present and not voting, and 10 excused and not voting.

### **MOTION - Return LB 1 to Select File**

Mr. Coordsen moved to return LB 1 to Select File for the following specific amendment:

FA11S4

Strike the enacting clause.

Mr. Coordsen withdrew his motion to return.

Mr. Chambers moved to return LB 1 to Select File for the following specific amendment:

FA12S4

Strike enacting clause.

Mr. Lynch moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

The Chambers motion to return lost with 6 ayes, 28 nays, 13 present and not voting, and 2 excused and not voting.

### **BILLS ON FINAL READING**

The following bills were read and put upon final passage:

#### **LEGISLATIVE BILL 1. With Emergency.**

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 21-330, 21-20,139, 45-104.01, 57-710, 57-717, 57-919, 70-1020, 74-1320, 76-711, 76-719.01, 77-918, 77-2618, 77-2709, 77-2769.01, and 77-4022, Reissue Revised Statutes of Nebraska, 1943, and sections 32-1607, 66-724, 77-1510, 77-1735, 77-1736.07, 77-1775.01, 77-2102, 77-2106.01, 77-2701, 77-2702.03, 77-2703,

77-2704.13, 77-2708, 77-2708.01, 77-2711, 77-2716.02, 77-2734.17, 77-2788, 77-2792, 77-2794, 77-4312, 77-4401, and 81-2404, Revised Statutes Supplement, 1992; to provide a corporate fee for 1993; to change interest rate provisions; to eliminate, change, and provide refund provisions; to exempt agricultural machinery and equipment from the sales and use tax; to change collection fees for sales and use taxes; to change an energy source and fuel tax exemption; to provide for a depreciation surcharge which is an excise tax and for a surcharge on corporations for tax year 1992; to provide for application of amounts paid in prior years to future liability; to change provisions relating to a fee on commercial fertilizers; to harmonize provisions; to provide severability; to repeal the original sections, and also section 77-1736.04, Revised Statutes Supplement, 1992; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Mr. Chambers requested a roll call vote.

Voting in the affirmative, 33:

Ashford	Conway	Johnson, R.	Morrissey	Warner
Baack	Crosby	Kristensen	Nelson	Wehrbein
Bernard-	Cudaback	Labedz	Pirsch	Wesely
Stevens	Hall	Landis	Rasmussen	Wickersham
Beutler	Hartnett	Lindsay	Robak	Will
Bohlke	Hillman	Lynch	Schellpeper	Withem
Chizek	Horgan	Moore	Schimek	

Voting in the negative, 13:

Abboud	Chambers	Elmer	Johnson, L.	Robinson
Beyer	Coordsen	Haberman	Lamb	Schrock
Byars	Dierks	Hefner		

Present and not voting, 1:

Rogers

Excused and not voting, 2:

Peterson      Schmit

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

## **LEGISLATIVE BILL 2. With Emergency.**

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-second Legislature, Fourth Special Session, 1992; to appropriate funds to aid in carrying out the provisions of Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 44:

Abboud	Coordsen	Hillman	Lynch	Schellpeper
Ashford	Crosby	Horgan	Moore	Schimek
Baack	Cudaback	Johnson, L.	Morrissey	Schrock
Beutler	Dierks	Johnson, R.	Nelson	Warner
Beyer	Elmer	Kristensen	Pirsch	Wesely
Bohlke	Haberman	Labeledz	Rasmussen	Wickersham
Chambers	Hall	Lamb	Robak	Will
Chizek	Hartnett	Landis	Robinson	Withem
Conway	Hefner	Lindsay	Rogers	

Voting in the negative, 0.

Present and not voting, 3:

Bernard-	Byars	Wehrbein
Stevens		

Excused and not voting, 2:

Peterson	Schmit
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

**PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business, the President signed the following bills and resolution: LB 1, LB 2, and LR 5.

### **MOTION - Notify Governor**

Mrs. Nelson moved that a committee of five be appointed to notify the Governor that the Ninety-Second Legislature, Fourth Special Session of the Nebraska Legislature, is about to complete its work, and to return with any message the Governor may have for the Legislature.

The Chair appointed Mrs. Nelson, Messrs. Morrissey, Rogers, R. Johnson, and Conway to serve on said Committee.

The Committee returned and escorted Governor E. Benjamin Nelson to the rostrum where he delivered a message to the members.

The Committee escorted the Governor from the Chamber.

### **PRESENTED TO THE GOVERNOR**

Presented to the Governor on November 12, 1992, at 11:15 a.m., were the following bills: 1 and 2.

(Signed) Rosie Ziemis  
Clerk of the Legislature's Office

### **MOTION - Approve Journal**

Mr. Morrissey moved that the Legislative Journal for the seventh day be approved as prepared by the Clerk.

The motion prevailed.

### **VISITOR**

Visitor to the Chamber was Barbara Nelson from Beatrice.

### **MOTION - Adjourn Sine Die**

Mr. R. Johnson moved that the Ninety-Second Legislature, Fourth Special Session of the Nebraska Legislature, having finished all business before it, now at 11:45 a.m., adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell  
Clerk of the Legislature



**RECEIVED AFTER ADJOURNMENT**

**LEGISLATIVE JOURNAL**

**NINETY-SECOND LEGISLATURE  
FOURTH SPECIAL SESSION**

**MESSAGE FROM THE GOVERNOR**

November 12, 1992

Patrick J. O'Donnell  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 1 and 2 were received in my office on November 12, 1992.

These bills were signed by me on November 12, 1992, and delivered to the Secretary of State.

Sincerely,  
(Signed) E. Benjamin Nelson  
Governor

**CERTIFICATE**

I, Patrick J. O'Donnell, Clerk of the Legislature, hereby certify that the foregoing communication is a true and correct copy of the letter provided concerning action on bills after adjournment of the Ninety-Second Legislature, Fourth Special Session of the Nebraska Legislature.

Patrick J. O'Donnell  
Clerk of the Legislature

November 12, 1992  
Lincoln, Nebraska

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**CHRONOLOGY OF BILLS**  
**NINETY-SECOND LEGISLATURE**  
**FOURTH SPECIAL SESSION**  
**1992**

**LEGISLATIVE BILL 1. By Warner, Baack, Hall, Landis, at the request of the Governor**

Nov. 5	Read first time .....	14
Nov. 5	Referred to Committee on Revenue. Notice of hearing (11/6) .....	18
Nov. 7	Placed on General File - Com AM11S4 .....	24
Nov. 7	Committee AM11S4 adopted. Laid over .....	25
Nov. 9	Elmer AM05S4 withdrawn. Failed to advance for Review .....	28
Nov. 9	Schrock AM45S4 withdrawn. Coordsen FA1S4 lost. Advanced for Review .....	31
Nov. 10	Placed on Select File - AM5317 .....	34
Nov. 10	AM5317 (E & R) adopted. Coordsen FA2S4 and Hartnett AM55S4 lost. Hall request for division of question on AM57S4 (on file) sustained. Hall FA3S4 (on file) and FA4S4 (on file) adopted. Schmit FA5S4 lost. Ashford motion to reconsider AM55S4 lost. Hillman motion to reconsider AM4S4 lost. Baack AM67S4 adopted as amended by Moore AM69S4, Hall-Warner FA6S4 and Baack-Hall FA7S4. Haberman request for point of privilege. Withem point of order. Chair ruled against Haberman request. Warner FA8S4 ruled a reconsideration of Hall amendment. Warner motion to suspend rules lost. Advanced for Engrossment .....	39
Nov. 10	Returned to Select File for Bernard-Stevens amendment. Bernard-Stevens FA9S4 ruled not a reconsideration and adopted. Chambers challenge	

	of Chair lost. Advanced for Engrossment .....	49
Nov. 10	Correctly Engrossed. ER7194 change .....	53
Nov. 11	Lamb motion to return to Select File for FA10S4 withdrawn .....	55
Nov. 12	Coordsen motion to return to Select File for FA11S4 withdrawn. Chambers motion to return to Select File for FA12S4 lost. Final Reading w/E 33-13-3 .....	59
Nov. 12	President signed .....	61
Nov. 12	Presented to Governor (11/12) .....	62
Nov. 12	Approved by Governor (11/12) .....	63

#### **LEGISLATIVE BILL 2. By Warner**

Nov. 5	Read first time .....	15
Nov. 5	Placed on General File .....	18
Nov. 7	Advanced for Review .....	25
Nov. 9	Placed on Select File .....	27
Nov. 10	Warner AM47S4 adopted. Advanced for Engrossment ....	35
Nov. 10	Returned to Select File for Moore amendment. Moore AM63S4 adopted. Advanced for Engrossment .....	48
Nov. 10	Correctly Engrossed .....	53
Nov. 10	ER7195 change .....	54
Nov. 12	Final Reading w/E 44-0-5. President signed .....	61
Nov. 12	Presented to Governor (11/12) .....	62
Nov. 12	Approved by Governor (11/12) .....	63

#### **LEGISLATIVE BILL 3. By Coordsen, Schrock**

Nov. 5	Read first time .....	15
Nov. 5	Referred to Committee on Revenue. Notice of hearing (11/6) .....	18
Nov. 10	Attorney General's Opinion #92122 to Lamb .....	36
Nov. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

#### **LEGISLATIVE BILL 4. By Coordsen, Schellpeper, Schrock**

Nov. 5	Read first time .....	15
Nov. 5	Referred to Committee on Revenue. Notice of hearing (11/6) .....	18
Nov. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

#### **LEGISLATIVE BILL 5. By Hefner**

Nov. 5	Read first time .....	15
Nov. 5	Referred to Committee on Revenue. Notice of hearing (11/6) .....	18
Nov. 7	Placed on General File .....	25
Nov. 9	Haberman motion to indefinitely postpone laid over .....	31
Nov. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 6. By Schmit**

Nov. 5	Read first time .....	17
Nov. 5	Referred to Committee on Appropriations .....	18
Nov. 6	Notice of hearing (11/9) .....	21
Nov. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 7. By Schrock, Conway, Cudaback, Elmer, Haberman, Hefner, L. Johnson, R. Johnson, Lamb, Moore, Nelson, Peterson, Robak, Robinson, Rogers, Wehrhein**

Nov. 5	Read first time .....	17
Nov. 5	Referred to Committee on Revenue. Notice of hearing (11/6) .....	18
Nov. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILL 8. By Lamb, Coordsen, Cudaback, Elmer, Haberman, Hefner, L. Johnson, Moore, Peterson, Robak, Robinson, Schmit, Schrock**

Nov. 5	Read first time .....	17
Nov. 5	Referred to Committee on Revenue. Notice of hearing (11/6) .....	18
Nov. 10	Attorney General's Opinion #92122 to Lamb .....	36
Nov. 12	Indefinitely postponed, pursuant to Rule 9, Sec. 8	

**LEGISLATIVE BILLS AND  
CONSTITUTIONAL AMENDMENT RESOLUTIONS  
BY INTRODUCERS**

**DENNIS G. BAACK**

**LB**

**1\*\*\***

Change provisions relating to revenue and taxation.

**GERALD CONWAY**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**GEORGE COORDSEN**

**LB**

**3\***

Exempt livestock from personal property tax.

**4\***

Exempt personal property other than certain motor vehicles from property tax.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**JIM D. CUDABACK**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**W. OWEN ELMER**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**TIMOTHY J. HALL**

**LB**

**1\*\*\***

Change provisions relating to revenue and taxation.

**REX HABERMAN**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

BILLS AND CONSTITUTIONAL AMENDMENT  
RESOLUTIONS BY INTRODUCERS

69

**ELROY M. HEFNER**

**LB**

**5**

Change the income tax and sales and use tax rates.

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**LOWELL C. JOHNSON**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**ROD JOHNSON**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**HOWARD A. LAMB**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**DAVID LANDIS**

**LB**

**1\*\*\***

Change provisions relating to revenue and taxation.

**SCOTT MOORE**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**ARLENE NELSON**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**RICHARD PETERSON**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**JENNIE ROBAK****LB****7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**C. N. "BUD" ROBINSON****LB****7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**CARSON H. ROGERS****LB****7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**LORAN SCHMIT****LB****6**

Prohibit certain state government activities.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**STAN SCHELLPEPER****LB****4\***

Exempt personal property other than certain motor vehicles from property tax.

**EDWARD J. SCHROCK****LB****3\***

Exempt livestock from personal property tax.

**4\***

Exempt personal property other than certain motor vehicles from property tax.

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**8\***

Exempt livestock from property tax and certain agricultural machinery from sales tax.

**JEROME WARNER****LB****1\*\*\***

Change provisions relating to revenue and taxation.

**2**

Appropriate funds for special session expenses.



BILLS AND CONSTITUTIONAL AMENDMENT  
RESOLUTIONS BY INTRODUCERS

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**ROGER R. WEHRBEIN**

**LB**

**7\***

Eliminate a fee imposed on sales of commercial fertilizer.

**\***

With others.

**\*\***

At the request of the Governor.

**\*\*\***

With others and at the request of the Governor.

**LEGISLATIVE BILLS AND RESOLUTIONS  
REFERRED TO COMMITTEE**

**Appropriations**

Chairperson - Scott Moore

6

**Revenue**

Chairperson - Timothy J. Hall

1

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4

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## SUMMARY OF LEGISLATION

### Ninety-Second Legislature, Fourth Special Session

**The following table shows the final disposition:**

Total Number of Bills Introduced ..... 8

Total Number of Resolutions Introduced ..... 5

Approved by Governor: (2)

LB1e      LB2e

Indefinitely Postponed: (6)

LB3      LB4      LB5      LB6      LB7      LB8

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LR1      LR5

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